

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN

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TEMPUR WORLD LLC,  
TEMPUR-PEDIC, INC.,  
and DAN-FOAM ApS,

Plaintiffs,

v.

Case No. 05-C-256

Computerized Online Marketing, INC.  
d/b/a OH MY ACH'N BACK,

Defendant.

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ORDER OF DISMISSAL

Based on the Stipulation and Settlement Agreement filed herein on September 20, 2005,

IT IS ORDERED that this action is dismissed without costs. The injunction, entered in favor of Tempur-Pedic and against COM, with the Court awarding the following relief remains in full force and effect:

- A. COM, and its officers, directors, servants, agents, employees, successors and assigns, and all persons acting in concert with COM, are hereby permanently enjoined from:
  - (i) using in any manner:
    - a. the trademarks SWEDISH SLEEP SYSTEM, SWEDISH, TEMPUR, TEMPUR-PEDIC, and TEMPUR & Design; or
    - b. any colorable imitation of any of the Tempur-Pedic Trademarks in or as part of COM's domain name, URL,

directory name, or other computer address; as or as part of the name of COM's website service; in buried code or metatags in COM's home page or web pages; in connection with the retrieval of data or information; in the content of COM's websites; or in any other manner on or in connection with any goods or services not originating entirely with or authorized by Tempur-Pedic;

- (ii) disseminating, using or distributing any advertising or other promotional materials, electronic or otherwise:
  - a. whose appearance so resembles the website pages or trademarks used by Tempur-Pedic as to create a likelihood of confusion, mistake or deception or to dilute the distinctive value of the Tempur-Pedic Trademarks; or
  - b. which contain the unauthorized use of any of the Tempur-Pedic Trademarks or any colorable imitations thereof;
- (iii) using the Tempur-Pedic Trademarks or any colorable imitation thereof on or in connection with any of Defendant's goods or services or in any other manner likely to cause confusion, mistake or deception as to the source or sponsorship of Defendant's goods or services;
- (iv) holding COM out to the public as being authorized by Tempur-Pedic or as being affiliated with or sponsored by Tempur-Pedic in

any manner or committing any acts likely to imply such a relationship or affiliation;

- (v) passing off COM's products and services as originating with or sponsored or authorized by Tempur-Pedic;
- (vi) further diluting the distinctive value of the Tempur-Pedic Trademarks; and
- (vii) using the word "Swedish" in connection with COM's products unless such products, in fact, originate in or have a legitimate connection to Sweden or otherwise using or disseminating, on their websites or otherwise, any false or misleading statements as to the nature, quality, characteristics or geographic origin of COM's goods and services.

- B. Within 10 days from the date of this Order, COM shall deliver up for destruction to Tempur-Pedic's counsel all goods, signs, advertisements, literature, business forms, cards, labels, packages, wrappers, pamphlets, brochures, receptacles, and any other written or printed material in COM's possession or control, which bear the Tempur-Pedic Trademarks, or any colorable imitation thereof, or any mark confusingly similar thereto, which was not manufactured by or for Tempur-Pedic, or which contain any false or misleading representation of fact, and any plates, molds, or other means of making the same;
- C. COM shall cause to be removed from the [www.swedishfoam.net](http://www.swedishfoam.net) website any and all references and/or links to its [www.viscofoam.net](http://www.viscofoam.net) website.

Further, Tempur-Pedic shall be allowed any and all discovery to determine the extent of COM's ownership or interest in the domain name www.swedishfoam.net. Should it be determined that COM has possession, custody, or control over such domain name, COM shall immediately have such domain name transferred to Tempur-Pedic within ten (10) days after the Court's entry of such a determination.

- D. COM shall provide Tempur-Pedic an accounting of its profits made as a result of the acts complained of herein. Tempur-Pedic may conduct any and all discovery from COM and its officers, directors, agents, employees, and representatives reasonably necessary to determine the amount of such profits.

IT IS FURTHER ORDERED that the court retains jurisdiction to enforce the terms of the Settlement Agreement.

Dated at Milwaukee, Wisconsin, this 22nd day of September, 2005.

BY THE COURT

s/ C. N. CLEVERT, JR.  
C. N. CLEVERT, JR.  
U. S. District Judge